IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11228 of 2004

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHUVALADI SEVA SAHAKARI MANDLI LIMITED - Petitioner(s)

Versus

PATEL YOGESHKUMAR RAVJIBHAI - Respondent(s)

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Appearance :

MR JV MEHTA for Petitioner No(s).: 1.

MR KISHOR M PAUL for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 09/08/2005

ORAL JUDGMENT

Rule. Shri Kishor M. Paul, learned advocate waives service of Rule on behalf of respondent. With the consent of the learned advocates appearing for the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner Cooperative Society has challenged the legality and validity of the judgment and award passed by the Labour Court, Ahmedabad, dated 3.10.2003 in Reference (LCA) No. 1071 of 1993 in partly allowing the said Reference directing the petitioner to reinstate the respondent workman with continuity of service and 25 per cent of backwages.

3. The petitioner society was running fairprice shop where the respondent workman was serving as a part-time employee. The respondent workman raised an industrial dispute challenging his alleged termination with effect from 1.5.1993 alleging that the same was in breach of provision of Section of 25(F) of The Industrial Disputes Act, 1947 [“the I.D. Act” for short] which was referred to the Labour Court, Ahmedabad for adjudication being Reference (LCA) No. 1071/1993. The said Reference was opposed by the petitioner by submitting that the fair-price shop itself has been closed, due to less workload the staff strength was reduced based on the principle “*last-cum-first-go*”. However, considering the fact that before retrenching the respondent the procedure as required under Section 25(F) of the I.D. Act was not followed the action was in breach of such provision, by judgment and award dated 3.10.2003 the Labour Court partly allowed the said Reference directing to reinstate the respondent workman but

with 25% of the backwages. Feeling aggrieved and dissatisfied with the judgment and award dated 3.10.2003 of the Labour Court in Reference (LCA) No. 1071/1993, the petitioner-society has preferred the present Special Civil Application under Articles 226/227 of the Constitution of India.

4. Shri J.V. Mehta, learned advocate appearing for the petitioner has submitted that when the fairprice shop itself was closed which fact was pointed out to the Labour Court the Labour Court was not justified in passing the order of reinstatement and to pay 25% of the backwages to the respondent workman. It is undisputed that before terminating the services of the respondent and/or before retrenching him no procedure as required to be followed under Section 25(F) of the I.D. Act was followed and therefore the finding of the Labour Court is not required to be interfered with. However considering the fact that the fairprice shop where the respondent workman was serving as Billing Clerk is closed since long there is no question of reinstatement of the respondent workman now. Shri Kishor M. Paul, learned advocate appearing for the respondent workman has submitted that the respondent workman is ready and willing to accept a lumpsum compensation in lieu of reinstatement which may be quantified at Rs. 35,000.

5. In view of the concession given by the

learned advocate, Shri Paul, appearing on behalf of the respondent, the judgment and award passed by the Labour Court, Ahmedabad dated 3.10.2003 in Reference (LCA) No. 1071/1993 is hereby modified to the extent that the respondent workman be paid Rs. 35,000/- in all in lieu of the reinstatement and backwages and towards the entire claim of the respondent No.1 workman as full and final settlement. The said amount of Rs. 35,000 be paid to the respondent workman as early as possible preferably within the period of six weeks from the date of receipt of this order.

6. Rule is made absolute to the aforesaid extent. However, considering the facts and circumstances of the case, the petitioner shall pay a sum of Rs. 1,000 towards the cost of the present proceedings to the respondent-workman.

[M.R. Shah, J.]

RMR.

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